### (Please print plainly) Speaking for Information only; Neither for nor against: 419 WESLINGTON St Date: November 20 **525** 3 Registering against: Registering In favor: Speaking against: Speaking In favor: City & Zip Code) Room 411 West (Representing) AB Servitor (Name) POKSK! BIII No. \_ Subject. Please return this slip to a messenger promptly. Madisa W53701 0921) Assembly Hearing Slip X Wis. Chapter, Amon Monning Ass N attenney Aichand A. Lehmann (Please print plainly) Street Address or Route Number) Assembly Sergeant at Arms Speaking for Information only; Neither for nor against: Ques //nicrny ST 11-20-97 Registering against: Registering in favor: BIII NO. AB 424 Speaking against: Speaking in favor: (City & Zip Code) Room 411 West State Capitol (Representing) Subject\_ (Мате) Date: Wiscarsia Loundies Association Please return this slip to a messenger promptly. 100 Rive Place Suite 10 Assembly Hearing Slip D (Please print plainly) UN. 20 1997 (Street Address or Route Number) Assembly Sergeant at Arms Speaking for Information only; Neither for nor against: Kathy Markelang 48 424 Registering In favor: Registering against: Speaking In favor: Speaking against: (City & Zip Code) Room 411 West State Capitol (Representing) BIII No. \_ Subject.

### Assembly Hearing Slip

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Date: 11 / 20 / 97  BIII No. AB 424  Subject	NURIA HERNANDEZ - MORA	16 N. CALLOLU ST. SUITE 810 (Street Address or Route Number)	MADISON WI 53703 (City & ZIP Code)	1000 TRIENDS OF WISCONSIN (Representing)
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Room 411 West
State Capitol
Madison, WI 53702

### **Assembly Hearing Slip**

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Assembly Sergeant at Arms
Room 411 West
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Assembly Sergeant at Arms Room 411 West

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## Assembly Hearing Slip

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Date: 1/20/97	BILLING. ASSEMBLY Bill 424	Subject	Philip Kaillar	(Name) 2553 (Amms 0.14)	(Street Address or Route Number)	Madison, W1 53711	(City & Zip Codé)	Univ. of Wisconsin Saz Grant Trut	(Representing)
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Please return this slip to a messenger promptly. Assembly Sergeant at Arms Room 411 West Madison, WI 53702 State Capitol

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State Capitol Madison, WI 53702

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Assembly Sergeant at Arms:

Room 411 West
State Capitol

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Madison, WI

### Assembly Hearing Slip

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Thee Laker Water Front Homeowners 1821, In (Representing)

WISCONSIN

Three Lakes,

(City & Zip Code)

(Street Address or Route Number

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Assembly Sergeant at Arms

Room 411 West

State Capitol

Madison, WI 53702

## Assembly Hearing Slip

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Date: 1100. 20, 1997

BIII No. 194 42 4

Or Subject

John 68 6. 18426685

(Name)

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(City & Zip Code)
AL CALLTE ORGILLES HSSON (Representing)

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Speaking for *information only;*Neither for nor against:

Please return this slip to a messenger promptly Assembly Sergeant at Arms
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Please return this slip to a messenger promptly.

Assembly Sergeant at Arms 53702 Room 411 West State Capitol Madison, WI

### Assembly Hearing Slip

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Room 411 West State Capitol Madison, WI

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Speaking for Information only; Neither for nor against:

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Registering against:

Assembly Sergeant at Arms

Room 411 West State Capitol Madison, WI

### Assembly Hearing Slip (Street Address or Route Number) (Please print plainly) (City & Zip Code) (Representing) Subject\_ BIII No. Date: (Please print plainly)

### Committee Meeting Attendance Sheet

### **Assembly Committee on Land Use**

Date: 11/20/97 Location: 338 NW	Meeting Type Stak Cap	Hublic Ditol	Hearin	9
Committee Member Rep. Michael Powers, Rep. John Ainsworth Rep. Carol Owens Rep. Peter Bock Rep. John Steinbrink		Present	Absent	Excused
	Totals:		U	

Kathi Kilgore, Committee Clerk

U John Gard, author -unfair, over regulatory, under enforced - exempts which - unfair to rural O breezeway between house garage not built w/pernuit/exempted for not enforcing law take away property (2) City of Resttipp 7 built large family in Town of Peshtigo

built gazebo same distance ce strenty of neighbor family fought it and still had to tear it down counting should have authority. Common sense summer home in Marinette Co. screen house on pre-cuisting concrete slab had to tear it down

Has to be a better wa

Deople into criminals

- willing to work toward and

opzebos, wishing wells, screened room, ded to exemptions

Enforce laws on cities

-Size restrictions on bootpoure about want condosjet built 10' from the work

Gard (con't) - appeals process?
-fighting city halfstate/goonty
- introducting to Deeple
-State gout isn't holding their thumb
-county zoning ordinalls
-willing to get names of people effected by it - for committees members
- MDP suggested audit of inconsistency
- MDP suggested audit of inconsistency -local people some say in enforcement
-continue to try to think of a solution
DNR Wede pon 1 - Sect. Heyer
000000
lack of understanding-doabetter
-75 minimum setback.  -can remove 40% phosphons
- Knows problems need to be dealt
Mos & A.

maybe thrunedo to be an Bill O'Connor-WAL -Uniform settack /30 years -property values agrees it hasn't been perfectly -detract from the consiste -work to make a perfect -consistency costs money -property rights of people y passing this bill examending what about the people like conformed Month

James Burgess Sauger Co noblems w/legislation ects are ineversible Taxes are property of the people of the Upoet the balance o enforce thoroughly 10 follo anto total asound you grandfathering in-let's not back it looking for simple answer to complex problem - Willing to would to value problem w/gozeto

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<b>Transfer</b>	· 安徽。	(a) - 1:			
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- very serious algae problems now - selective enforcement! - magical boundaries of counties

-legislation is breaking down what broketion we have

- no unitorm/more murey is eliminate setback - dogs it feel when should be exempt

John Greene-Dot -waters of the state - public trust Phil Keillor-UWSeaGrant Institute - wastal ungineering -homes-determental -no relocation is capable due to 1013-- up noth speak would to build where ever they want to - problems get erosion - base setbacks -counties will have process -adverse effect on the development of Lake bluffs one for ther other states have gone for ther in selbacks Nuria 1000 Friends Ounneccesary threat to the quality of the waters -only a minimum - contribute to deterioration of -recommends read the DNR goes against land use council recolumendation - Planning WI

-unrealistic goals > James Clark WI Co: Code Administrators compromise common ground would be Carry Terrell—Sierra Club - opposed to removing safeguards
- anachos-will effect -gazebos-will effect impact water quality -increase county cost
-add to confusion -penalize those who have 

CONSTITUENT LOG
Date: 6-44-97 Time: 15:38
Name: Mike Stapleton
Address:
Telephone: (H) Business:
(W) <u>603 191-7660</u> (Fax) <u>742-9817</u> Person Taking the Request: <u>1966</u>
Person Taking the Request: VIV
Reason for Contacting Office:
Columbia Courty Dir. of Planning + Zoning
AB 424 - Shoreland Set back requirements
Would like to know if the bull gets scheduled
for a henrina
2/25: Called Mike back to find out where he he and
2/25: Called Mike back to find out where he heard about it - from WI County Code Administrators
(WCCA) - (we also received a call from Nat Sampson
from Buffalo (o.)
- I told him instead of notifying everyone Who
contacts us iddividually that we will contact the
_ · · · · · · · · · · · · · · · · · · ·
- Ted Palaloff of Columnet Co is residetive
- Ted Rohloff of Calumet Co. is legislative
chair this year - call him with info
(919) 849-1442 ext 442 1481

### **CONSTITUENT LOG**

Date: 6-210-97 Time: 8:55am
Name: Gary Spark
Address: 100 Polic Co. Plaza, Suite 130
Baisan Lake 54810
Telephone: (H) Business: Polk Co. Zoning (W) (Fax) Person Taking the Request: Kathi
Reason for Contacting Office:
- Would like to be notified when AB424- is
ocheduled for a hearing
- He is a member of the WCCA and I told him
we would notify the wich when a hearing
_ v ocheduled

### **CONSTITUENT LOG**

Date: <u>0-24-9</u> Time: <u>9:35</u>	<u> pami</u>
Name: Gareth Johnson	
Address: 1202 Northport	
Madison 53704	
191001 DY 1 5510	
Геlephone: (H)	Business: Dane Co. Division of Publi Health
(W)	<del></del>
(Fax)	
Reason for Contacting Office:	notified when AB424
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### Kilgore, Kathi

From:

John S. Edwards[SMTP:jsedwar1@facstaff.wisc.edu]

Sent:

Sunday, November 30, 1997 4:44 PM

To:

Rep.Powers

Subject:

Wisconsin Assembly Bill

The repeal of the 75' setback of lakeshore homes is sheer nonsense and I certainly hope you will reconsider the wisdom of this bill. What other reasons than greed could make this bill understandable? Please take this into consideration, that many shoreline homeowners would be badly affected by the change in this law. Thank you. Cynthia and John Edwards John & Cindy Edwards 3650 Lake Mendota Dr. Madison, WI 53705 fax: 608-233-2877

fax: 608-233-2877 phone: 608-233-8463 jsedwar1@facstaff.wisc.edu

### **CONSTITUENT LOG**

Date: 11-24-97 Time: 4:30	pm
Name: Rep. David Word	
Address:	
	·
Telephone: (H) $U-3790$	Business:
(W) <u>U 2 190</u> (Fax)	Person Taking the Request: 4
Reason for Contacting Office:	
- Called to ask that	AB434 (75'sethack) be
exected out of the	ABH34 (75'settrack) be Land Use Committee and
prought to the fu	ill assembly for a vote
-a constituent had a	oked him to see that the
bill gets passed	
<del></del>	
<del></del>	

DATE: November 24, 1997

TO: Rep. Powers

FROM: Mark Patronsky (266-9280)

SUBJECT: AB 424--Shoreland Zoning

Here is information about what the City of Madison does under its zoning ordinance for lakefront property. It's not exactly shoreland zoning, but there are some familiar elements of water quality protection in it.

A couple of interesting points:

- 1. All waterfront construction requires a conditional use permit.
  - 2. Every conditional use permit requires a public hearing.
- 3. It's really not an issue that the city doesn't have a 75-foot setback because there aren't any big areas of undeveloped lakefront. However, if undeveloped lakefront were available, the normal rear yard minimum of 40 feet from the principal building would apply, and accessory structures could be as little as 3 feet from the rear lot line.

ZONING CODE

Sec. 28.04(19)(b)

(b) General Regulations. The following regulations shall apply to all new development except a Civic Auditorium Complex. No building permit shall be issued for any new development of a waterfront or shoreland zoning lot without first obtaining a conditional use permit therefore. For purposes of this section, new development shall be a new principal building, an addition in excess of five hundred (500) square feet of floor area to an existing principal building if located on the water side of the existing building, or an accessory building in excess of five hundred (500) square feet of floor area if located on the water side of the principal building. The conditional use permit shall be issued pursuant to the procedure set forth in Section 28.12(10) of this ordinance. In addition to the review standards set forth in Subdivision (g) therein all waterfront development shall be subject to the following standards. (Am. by Ord. 10,713, 8-27-93)

- 1. For purposes of this section, the cristing development pattern shall mean the average setback of the five (5) developed zoning lots to each side of the proposed development lot. For a zoning lot where a principal building does not or has not existed, the principal building setback shall be not less than the larger of the existing development pattern or the required yard. For a zoning lot where a principal building exists or has existed, the principal building setback shall be not less than the setback of the existing or previously existing principal building or the larger of either the existing development pattern or the required yard.
- 2. Upon the filing of an application for a conditional use permit, the development plan shall show a complete inventory of shoreline vegetation in any area proposed for building, filling, grading or excavating. In addition, the development plan shall indicate those trees and shrubbery which will be removed as a result of the proposed development. The cutting of trees and shrubbery shall be limited in the strip thirty-five (35) feet inland from the normal waterline. On any zoning lot not more than thirty percent (30%) of the frontage shall be cleared of trees and shrubbery. Within the waterfront setback requirements tree and shrub cutting shall be limited by consideration of the effect on water quality, protection and scenic beauty, crosion control and reduction of the effluents and nutrients from the shoreland.
- Any building development for habitation shall be served with public sanitary sewer.
- Filling, grading and excavation of the zoning lot may be permitted only where protection against erosion, sedimentation and unimpairment of fish and aquatic life has been assured.
- 5. Where the City's adopted Master Plan includes a pedestrian walkway or bike path along the shoreline, the proposed development shall not interfere with its proposed location.

Stept.	TO:	Dr.	Petronsky	y FROM: Pater Location		DATE: PAGES	1/124/97 INCLUDING	3 14850
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6. Construction of marine retaining walls or bulkhead may be permitted providing such construction does not protrude beyond the established shoreline of the adjacent properties. Said retaining walls and bulkheads will be permitted only for the purpose of preventing shoreline recession. The filling and grading of the shoreline shall occur only in the construction of such retaining walls or bulkheads.

NOV 24'97

- In addition to complying with the above standards, boathouses shall not be constructed for human habitation.
- (c) Waterfront Development Less than 500 Square Feet. All development less than 500 square feet in floor area on the water side of an existing building, including additions to an existing building, shall conform to the setback requirements in Sec. 28.04(19)(b)1. above. (Cr. by Ord. 11,591, 6-3-96) (28.04(19)Cr. by Ord. 4664, 8-5-74)
- (20) Regulations for all Floodplain Districts. (Title Am. by Ord. 8957, Adopted 9-2-86)
   (a) General Requirements.
  - No development shall be allowed in floodplain areas which will:
    - a. Cause an obstruction to flow, an obstruction being any development which physically blocks the conveyance of floodwaters by itself or in conjunction with future similar development causing an increase in regional flood height; or
    - b. Cause an increase in regional flood height due to floodplain storage area lost, which is equal to or exceeding 0.01 foot, except as provided in Paragraph 2, below.
  - Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance and to the official floodplain zoning maps, including floodway lines and water surface profiles, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than 1.0 foot for the affected hydraulic reach of the stream.
  - The Zoning Administrator shall deny permits where it is determined that the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater.
  - 4. The placement or replacement of mobile homes in any Floodplain District is prohibited.
  - 5. All proposals for land subdivisions or other new developments in floodplain areas shall include regional flood elevation data and any means to provide adequate surface drainage and to minimize flood damage. In the case of a subdivision with more than fifty (50) lots or five (5) acres, whichever is less, or a new development whose estimated cost exceeds seventy-five thousand dollars (\$75,000), the applicant shall provide all necessary computations to show the effects of such proposal(s) on flood heights, flood velocities and floodplain storage. In the case of all other subdivisions and developments and in those instances where there are no adequate data, the applicant shall provide valley cross sections and other survey data which shall be transmitted by the Zoning Administrator to the Wisconsin Department of Natural Resources for a determination of flood protection elevations and for an evaluation of the effect of the proposals on flood heights, flood velocities and floodplain storage.

### TESTIMONY OF ATTORNEY GENERAL JAMES E. DOYLE IN OPPOSITION TO 1997 ASSEMBLY BILL 424

Hearing Before the Assembly Committee on Land Use November 20, 1997

Wisconsin has no natural resources more valuable than its lakes and rivers, and none more vulnerable to injury from human activity. The principal bulwark against degradation of our waters has been the public trust doctrine, under which the state's navigable waters are held for the benefit of all of the state's citizens. However, the state's role as trustee is not merely the passive one of holding title to the state's waters. Rather, the state has an active duty "to protect and preserve those waters for fishing, recreation, and scenic beauty." Muench v. Public Service Comm., 261 Wis. 492 (1952).

Two historical developments provide important background to an evaluation of AB 424. First, the scope of public rights in navigable waters has been expanded to include not only commerce and navigation, but recreational pursuits, including the enjoyment of scenic beauty. Muench v. Public Service Comm., 261 Wis. 492 (1952). Moreover, our supreme court has declared that the right to enjoy scenic beauty "is a legal right that is entitled to all the protection which is given financial rights." 261 Wis. at 512.

Second, we have learned a great deal about the threats human activities pose to water bodies and the ecosystems they support. In particular, we have a far greater understanding of the detrimental effects of shoreline development on a lake or river. These effects range from runoff to erosion to loss of habitat to impairment of scenic beauty. The state supreme court has recognized the importance of shoreland areas to the health of water bodies: "Lands adjacent to or near navigable waters exist in a special relationship to the state." <u>Just v. Marinette County</u>, 56 Wis. 2d 7, 18 (1972). The scientific knowledge we have acquired in recent decades has only reinforced the principle, long ago endorsed by this body, that shoreline protection is critical to the preservation of our navigable waters

Although the necessity of creating a buffer strip around water bodies is beyond reasonable dispute, AB 424 is premised on the notion that a minimum setback is regulatory overkill. It plainly is not. To the contrary, given the wealth of information regarding shoreland impacts on water bodies, transferring exclusive responsibility for shoreland areas to counties could justly be viewed as abdication of the state's trust responsibility.

AB 424 would turn back the clock precisely thirty-one years. In 1966, the Legislature enacted the statutory program that AB 424 seeks to undo. The purpose of the legislation, written directly into the statutes, bears repeating:

### 281.11 Statement of policy and purpose.

The department shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general comprehensive action program directed at all present and potential sources of water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this subchapter is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. . . it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole.

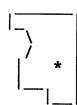
The last sentence quoted above contains the proper measuring stick for AB 424: Is the greatest result for the people of the state as a whole achieved by the present system, with a state-mandated minimum setback, or by bestowing complete discretion on counties to establish setbacks?

In my view, the answer is clear-cut. Shoreland setbacks have been very successful in keeping new structures a reasonable distance from shorelines. And the same qualities that make waters good resources for boating, fishing and other recreational pursuits enhance the value of lakefront property. It should hardly be a surprise that the result of zoning restrictions such as setbacks is the same for riparians as it is for city-dwellers—enhancement of property values. The predictable result of allowing structures to encroach further toward lakes and rivers will be to make such areas less desirable—and hence less valuable—for visitors and residents alike.

The state's strong interest in preserving and protecting its waters merits the imposition of minimum setbacks statewide, to ensure consistency and adequate protection. It is difficult to see the benefit of permitting the vagaries of local politics to determine the extent to which the state's resources are protected. As the court of appeals recently recognized, "the Supreme Court case law evidences its effort 'to protect the legislature from itself and from its temptation to succumb to pressures of purely local interests.'" Gillen v. City of Neenah, \_\_\_ Wis. 2d \_\_\_ (Ct. App. 1997)(slip op. at 5, quoting Joseph L. Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, 68 Mich. L. Rev. 471, 523 (1970). The state cannot fulfill its obligation of protecting its navigable waters if it relinquishes its role in the regulation of shoreland areas.

The burden is squarely on the proponents of AB 424 to demonstrate that the imposition of minimum setbacks from shorelines is unnecessary to protect lakes and rivers, and the public's rights in those waters. Such a contention is suspect on both factual and legal grounds. Enactment of AB 424 would be a step decidedly backwards from environmental regulation that has served the state well for over three decades. I thus urge the committee to reject the bill.

Appleton/Sherwood - (920) 989-2700 Ext. 442



206 Court Street Chilton, WI 53014

November 19, 1997

Rep. Michael Powers, Chair Assembly Committee on Land Use Room 30 West, State Capitol P.O. Box 8953 Madison, WI 53708

Re: AB-424, Shoreland Zoning set-backs to Navigable Waters of the State.

Dear Representative Powers,

On behalf of the Calumet County Planning Department, I feel compelled to represent to your committee the importance of the present building set-back parameters to Wisconsin's navigable waters. The justifications for maintaining this minimal protective measure include the following considerations:

- Practices that affect the surface water resources of the State of Wisconsin are too valuable, and affect to many people to be completely managed by local government, including building activity set-backs. Surface waters are regional and statewide resources that require a comprehensive approach to their use and management. The efforts of one county or community could be seriously negated by poor management practices of an adjacent political entity. Inevitable negative consequences will affect tourism, property values, quality of life, and the physical quality of the water itself. With continual, statewide algae blooms and sedimentation problems, it seems apparent that more protection is presently merited, not less.
- It's no secret that pressure for development of shoreland areas is increasing dramatically. With the elimination of statewide standards and guidance, local governments will be increasingly pressured into a down-spin of abdication of their responsibilities in resource management, including but not limited to this critical protective parameter. Additionally, there will be infinitely more confusion and consequent frustration experienced by a citizenry that is forced to deal with piecemeal and patchwork resource regulation. Imagine trying to justify resource protection that magically changes by a political boundary line even though an adjacent property is located on the same body of water; such a scenario makes regulation difficult at best. Again, the navigable water resource doesn't stop at any given political boundary line; indeed the foundation of the Public Trust Doctrine is that the navigable water resource of Wisconsin be protected for the benefit of all of the citizenry in a consistant manner.

I can assure you that the highly touted precept of "local control" bantered by those who would eliminate virtually all regulations not tailored to their specific benefit, can be woefully inadequate in dealing with the tough issues inherent with regulation of a resource pressured by so many different and increasingly conflicting interests. Remember that it wasn't local control that facilitated the clean-up of the Lower Fox River; an abhorrent legacy that hasn't completely come to closure some 27 years later.

Other of malfeasance and inconsistency in regard to DNR oversight of this regulation are a mystery to this department. The variety of tools needed to mitigate hardship situations are adequately utilized by this county's Zoning Board of Adjustment, and it is expected that only the most egregious and grossly irresponsible decisions made by that board would be challenged by the DNR. Furthermore, precisely because of the potential for abuse or negligence by those charged with administration of the set-back regulation, some oversight of local decisions is healthy. The DNR has no veto power over local shoreland zoning decisions, and must defer to judicial venues to resolve the most egregious decisions. Given the enormous volume of variance requests, this process is used sparingly indeed.

In conclusion I must reiterate that the existing 75' building set-back to navigable waters, although arguably inadequate, is unquestionably more desirable than any headlong plunge toward a localized "do-your-own-thing" policy promulgated in deference to a minority of individuals who seemingly can't be bothered by, or have little understanding of, water quality and related natural resource protection.

I am respectfully yours,

Theodore Rohloff



### TESTIMONY OF WILLIAM P. O'CONNOR LEGISLATIVE COUNSEL IN OPPOSITION TO 1997 ASSEMBLY BILL 424

### ASSEMBLY LAND USE COMMITTEE November 20, 1997

The Wisconsin Association of Lakes, Inc., is a statewide organization whose purpose is to preserve and protect Wisconsin inland waters, their watersheds and ecosystems. The Association's membership includes individuals, businesses and lake management organizations, including lake associations, public lake and sanitary districts, cities, counties, villages and towns. Our membership includes recreational boaters, fisherman and other lake users and hundreds of the lake property owners subject to shoreland zoning regulations.

WAL strongly opposes Assembly Bill 424 because we believe that a uniform 75 foot building setback from public waters:

- 1. Supports property values;
- 2. Protects the public interest in our public waters; and
- 3. Maintains Wisconsin's edge in attracting tourism.

The shoreland building setback requirement has been a part of Wisconsin's program of public waters protection since the adoption of the Water Resources Act during the term of Governor Warren Knowles 1968. For 30 years, the program has set a consistent standard for building setbacks in the state's rural lakes through a joint state-county effort.

This program has paid rich dividends. It has helped to support the economic value of waterfront property and it has maintained the ecological value of the near shore area as habitat for the plants and animals.

The Wisconsin Supreme Court has recognized that the public trust doctrine established under our state constitution obligates the state to protect our public waters for fishing, recreation and scenic beauty. The Court also recognized that building limits in the shoreland zone are a component of that trust duty.

We agree with the statement of the Court that the purpose of the Shoreland Zoning program is to "protect navigable waters and the public rights therein from the degradation and deterioration which results from uncontrolled use and development of shorelands . . . in the fulfillment of the state's role as trustee of its navigable waters." <u>Just v. Marinette</u> County, 1972.

During the 30 years the building setback standard has been in place, a vast amount of construction has occurred in the shoreland zone. Although enforcement has not been perfect, construction in undeveloped shore areas has been generally consistent with the setback requirements. The law has always permitted exceptions from the setback permitting construction in developed shore areas in conformance with an existing pattern of development.

Application of these regulations requires good common sense. Some of our own members have encountered technical problems with ordinance administration that have caused a nuisance. Some of these problems will be corrected by two modifications to the shoreland zoning standards enacted last month as part of the biennial budget bill. WAL did not oppose those modifications, which we feel address legitimate problems in the program.

But overall, the setbacks have been a 'win-win situation.' Everybody benefits from having a buffer between buildings and water. Having a consistent setback line has protected the rights of all lakeshore landowners and maintained property values. The last thing we need is to build right up to the water's edge.

By repealing the statewide setback standard now, you will threaten the property values of owners who have abided by the law this past 30 years. Now they will be subject to new construction on neighboring lands that block the broader views created by their compliance with the setback laws.

At the same time, you will diminish the natural scenic beauty that Wisconsin's lakes have retained despite three decades of intensive development. This lost value will be felt by fisherman and boaters who use our lakes, including state residents and visitors who come to Wisconsin to enjoy a quality water based recreational experience.

The setback protects fish and wildlife corridors in the life-rich shore zone, too. Let's not take a step backward, putting water quality and the economic and recreational value of our public lakes at risk. Its hard to imagine a resource that has done more for the heritage and economy of this state than our 15,000 public inland lakes.

Our forbearers have taken pains to protect them. We hope that the Legislature will see the potential damage and reject this proposal.

For information call: William P. O'Connor 608-255-3000



### Wisconsin County Code Administrators

November 18,1997

Rep. Michael Powers, Chair Assembly Committee on Land Use Room 30 west, State Capitol P.O. Box 8953 Madison, WI 53708

RE Assembly Bill 424, relating to county shoreland zoning and setbacks from navigable waters

Dear Rep. Powers,

The Wisconsin County Code Administrators is an association of county employees responsible for administration and enforcement of land use regulations, including zoning, private sewage systems, subdivision control, and other related programs. I serve as current president of the association.

WCCA finds it necessary to oppose Assembly Bill 424 for the following reasons:

- 1) The current uniform setback provides important water quality benefits which would be compromised or lost completely if lesser setbacks were permitted. Runoff, soil erosion, nutrient transport and sedimentation to our lakes and streams would increase, and aesthetic quality would suffer due to the loss of shoreline vegetation.
- 2) Adoption of this measure would be a repudiation of the public trust doctrine, which holds that the state has the responsibility to manage the waters of the state for the benefit of all. Maintaining uniform minimum shoreline development standards is a reasonable and effective way to fulfill that responsibility. These waters are a statewide resource that should not be subjected to a patchwork of varying regulations and lower standards.
- 3) Lakes and streams do not respect county boundaries, and lower standards in one county would be detrimental to water quality and property values in another where higher standards might be maintained.
- 4) Lowering the standard, resulting in negative water quality and aesthetic impacts, would run contrary to the intent of the Navigable Waters Protection Law, s. 281.31, Wisconsin Statutes.

5) There have been attempts made in the past to limit the Department of Natural Resources in its oversight role in the administration of shoreland zoning. This bill appears to be another attempt to accomplish that by simply lowering or removing the standards. The Department cannot veto local decisions in these matters, but can only appeal them through the court system. We believe that the Department has done this sparingly, and only in cases where the legal standards have been essentially ignored.

The development pressures being felt on virtually all of our precious waterways is well documented and has been the focus of much attention and concern in recent years. No one doubts that this pressure will continue, and it would be a serious mistake to add to that pressure by adopting a measure which is certain to have adverse impacts. Shoreland zoning and the current setback requirement are effective tools in providing the minimum level of protection our waters deserve, and they should not be compromised.

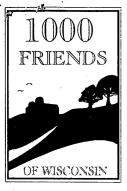
We respectfully request that Assembly Bill 424 not be adopted. Thank you for taking the time to consider our comments

Sincerely,

James Clark

Director of Environmental Health, Dane County President, Wisconsin County Code Administrators

JC:ms



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Sen. Gaylord Nelson, Honorary Chair

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### **Comments on Proposed AB 424**

Nuria Hernandez-Mora
Assistant Director
1000 Friends of Wisconsin
Madison, November 20, 1997

1000 Friends of Wisconsin is a statewide membership organization whose mission is to promote state land use planning and decision-making that protects natural resources, ensures the preservation of productive farmland and livable communities, and provides for orderly development that most efficiently utilizes public investments in infrastructure and service delivery.

### The 1000 Friends of Wisconsin position on AB 424

1000 Friends of Wisconsin opposes this legislation for three primary reasons:

- 1. AB 424 poses an unnecessary threat to the quality of Wisconsin's waters. It may therefore violate the State's responsibility to protect the public interest in navigable waters which is an integral part of Wisconsin's Public Trust Doctrine.
- 2. From a land use perspective, the proposed legislation will exacerbate the problem of excessive development that is destroying the integrity of Wisconsin's waters.
- 3. Finally, AB 424 runs contrary to other recent initiatives taken by the Legislature and by the Department of Natural Resources. In this sense, it disregards the recommendations of the Governor's Interagency Land Use Council, which highlighted the need for more cooperation on land use issues both at the state and the local levels in order to ensure the implementation of a rational land use system in Wisconsin.

We would like to discuss each of these concerns in turn. .

### AB 424 poses an unnecessary threat to the quality of Wisconsin's waters

AB 424 would prevent the Department of Natural Resources (DNR) from establishing minimum setback standards for buildings in shorelands. According to DNR's estimates, if the bill were passed, approximately 80% of the 70 counties with shoreland zoning ordinances in place would "either completely eliminate or reduce the 75 foot waterway setback requirement" that is currently a part of the Department's Shoreland Management Program.

Such a restriction would jeopardize the statute's purpose of fulfilling "the state's role as trustee of its navigable waters" and to "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; (...) and reserve shore cover and natural beauty" (Wi.Stats. 281.31 (1)).

An evaluation of the Shoreland Management Program recently completed by the DNR states that, according to the best scientific evidence available, the Program is currently insufficient to meet the statutory goals. According to the report, the scientific literature suggests that increasing the minimum structure setback requirements, closing existing loopholes in the legislation and tightening restrictions on shoreline modifications would serve to improve water quality, scenic beauty and wildlife habitat. Eliminating any kind of statewide requirements as AB424 proposes would only contribute to the deterioration of the quality of Wisconsin's waters. Furthermore, by delegating responsibilities to the counties, the bill could be considered an abandonment of the state's duty to protect navigable waters under the Public Trust Doctrine.

The DNR's report, Shoreland Management Program Assessment, contains a thorough analysis of the effectiveness of the program, its shortcomings, and valuable suggestions for improvement. The suggestions are based on the best scientific data available and on sound professional judgement. We recommend that Committee members read this report before taking action on this piece of legislation.

### The proposed legislation can exacerbate development pressures on Wisconsin's waters

Waterfront property is among the most coveted real estate property in Wisconsin. Particularly fragile areas like the northwoods or Door County are currently experiencing intense development pressures. If present development rates persist, all undeveloped lakes not in public ownership in northern Wisconsin could be developed within the next 20 years. What's happening in these areas is only a repetition of past development patterns in the southern part of the state, where most lakes larger than 10 acres have extensively developed shorelines.

Wisconsin's Shoreland Development Program has attempted to ensure that shoreland development takes place while protecting scenic beauty, water quality, and wildlife habitat. It is precisely these qualities that Wisconsinites most frequently cite as their reason for visiting or living near lakes and rivers. In Northern Wisconsin alone, it is the value that people place on these qualities that largely drive the region's \$1 billion tourism industry. A variety of surveys have demonstrated that what Wisconsinites want is increased shoreland protection in order to protect the qualities that they value in these resources. It is the reinforcement of Wisconsin's Shoreland Management Program, not its weakening, that would ensure the protection of these valuable and endangered resources.

### AB 424 runs contrary to other statewide efforts to ensure the integrity of Wisconsin's waters and disregards to the recommendations of the Interagency Land Use Council

Various recent statewide initiatives are directed at maintaining and improving the quality of Wisconsin's waters. Some examples are the DNR's *Northern Initiatives* (A Strategic Guide for DNR Management in Northern Wisconsin in the Next Decade), and the Lake Classification Program created by the legislature during the recent budget process. Other existing programs, such as the Priority Watershed Program, have been working to enhance water quality in Wisconsin's waterways. Over the next biennium alone, the state will spend \$40 million in its nonpoint source pollution abatement program. It seems rather incongruous

that these statewide efforts and substantial resources are being spent while the Assembly considers passing AB424, which runs contrary to the purpose of these other efforts.

The Governor's Interagency Land Use Council *Planning Wisconsin* report suggested that the state "can facilitate effective land use by linking agency activities to a clear set of land use criteria, coordinating existing resources and supporting regional, county and municipal planning activities." Clearly, part of this state role is to send clear and consistent signals from the state government of what sound land use should be. Eliminating statewide setback requirements, as AB 424 wants to do, would send the message to counties that shoreland protection is no longer a statewide priority, and would contradict the intent and purpose of other statewide efforts that attempt to improve the integrity of the state's waters.

Thank you for your attention.

Testimony before the Wisconsin Assembly's Land Use Committee Thursday, November 20, 1997 on AB424

My name is Philip Keillor. I am a Registered Professional Engineer in the State of Wisconsin. From 1975 to the present, I have been employed by the University of Wisconsin Sea Grant Program as a Coastal Engineering Specialist. During this time I have been periodically involved in teaching and advising on how to recognize and minimize the risks of flooding and erosion on Great Lakes coasts. I have assisted staff of state agencies and county governments, prospective and present landowners and professionals with a stake in prudent coastal development.

The proposed elimination of the statewide 75 feet setback ordinance in unincorporated areas in AB424 is detrimental to the wise use of Wisconsin's Great Lakes shorelands.

AB 424 makes no mention of the usefulness of minimum construction setback distances in minimizing the damage to, and loss of, buildings from erosion. Minimum setback distances provide an indicator to developers and landowners on where it is unsafe to build because of proximity to the dynamic, changing boundaries between land and water. Consistent, minimum construction setback distances are most important on Wisconsin's Great Lakes coasts where there is much more storm wave energy attacking the shore and more erosion than is usually experienced on inland shores.

AB424 would remove one obstacle to building homes in hazardous areas: the statewide minimum setback distance. My experience is that coastal counties are susceptible to pressure to allow building construction that is too close to the edges of bluffs and banks, or on lots which do not have room for future relocation of buildings that become threatened by erosion.

The present minimum 75 feet setback is not excessive for safe construction purposes on Wisconsin's Great Lakes coasts. This setback distance offers a margin of safety for buildings only on sites less than 20 feet above highest water levels that are naturally stable or moderately erodible. Even for relatively-low sites there is some erosion danger with the present state minimum setback. In March of 1985, as the western Great Lakes were rising, several weekend storms hammered Wisconsin's Lake Michigan coast. Several property owners called me and reported that in one daylong storm event they lost up to 50 feet of the lakeside yards in front of their homes. When the storm had passed, the lakeside edge of their lakeshore banks was suddenly at their front steps. At least one of these homes had to be quickly relocated.

AB424 will have an adverse impact on the safe development of Wisconsin's coastal bluffs. Much of Wisconsin's low-lying coastal land on the Great Lakes is already developed because of its' attractive, easy access to the water. Much present coastal development activity is renovation or new construction on developed properties and new buildings on undeveloped land along the state's 20 to 115 feet high coastal bluffs. These bluff lands are where much of the state's new coastal development will be occurring in the future.

If future coastal development is to be done safely, it is best done with a construction setback determination based on a method for identifying coastal construction hazard areas. This method should be consistent, credible, understandable and readily available. Minimum state standards for setting new buildings safely back from shoreline bluffs and banks are needed to help prevent unwise and unsafe coastal development. Adequate construction setback distances will minimize safety risks, reduce future property losses and reduce future property tax losses to coastal property owners and local governments, respectively.



### CALUMET COUNTY PLANNING DEPARTMENT

Chilton - 849-1442 Brillion - 756-2637 Appleton/Sherwood - 989-2700

206 Court Street Chilton, WI 53014

November 19, 1997

Rep. Michael Powers, Chair Assembly Committee on Land Use Room 30 West, State Capitol P.O. Box 8953 Madison, WI 53708

Re: AB-424, Shoreland Zoning set-backs to Navigable Waters of the State.

Dear Representative Powers,

As Chair of the Calumet County Planning and Zoning Committee, I would like to offer our concern about any legislative attempt to eliminate the state-wide set-back standards for buildings to navigable waters, and to express our dismay that this initiative is being premised on alleged inconsistencies in the administration of these standards. It is our experience that given the incalculable benefits to water quality and aesthetic preservation, that these already minimal standards shouldn't be jeopardized for the benefit of a selected few.

There already are administrative tools to mitigate "hardship" circumstances that include, but are not limited to, set-back averaging. To allow individual counties to dummy down these minimum standards could very well cause a race to the bottom concerning shoreland protection; where does it end? In this time of burgeoning development on every conceivable watercourse in our state, and consequent crisis generated local ordinances, it would seem that more protection - not less - is appropriate. What about our responsibilities accordant to the Public Trust Doctrine?

On the matter of Representative Gard's contention that the Department of Natural Resources hasn't demonstrated a ". . consistant level of fairness in regards to shoreland set-back laws . .", we simply have not found that to be the case. Moreover, we see little plausibility in eventuating consistency by having 72 different ordinances, the enforcement of which will be subject to the enormous pressures of local politics.

In conclusion, while recognizing that no program or ordinance is perfect in everyone's estimation, we feel that to throw away an essential component of shoreland protection - a component that has worked well for more than 25 years - would be a significant undermining of an existing program whose benefits are needed now more than ever. We strongly oppose this initiative, and we're hopeful that the Assembly Committee on Land Use will be advised as such.

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Respectfully,

Greg Griesbach, Chairman

Calumet County Planning and Zoning Committee



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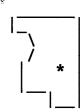
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November 19, 1997

Rep. Michael Powers, Chair Assembly Committee on Land Use Room 30 West, State Capitol P.O. Box 8953 Madison, WI 53708

Re: AB-424, Shoreland Zoning set-backs to Navigable Waters of the State.

Dear Representative Powers,

On behalf of the Calumet County Planning Department, I feel compelled to represent to your committee the importance of the present building set-back parameters to Wisconsin's navigable waters. The justifications for maintaining this minimal protective measure include the following considerations:

- Practices that affect the surface water resources of the State of Wisconsin are too valuable, and affect to many people to be completely managed by local government, including building activity set-backs. Surface waters are regional and statewide resources that require a comprehensive approach to their use and management. The efforts of one county or community could be seriously negated by poor management practices of an adjacent political entity. Inevitable negative consequences will affect tourism, property values, quality of life, and the physical quality of the water itself. With continual, statewide algae blooms and sedimentation problems, it seems apparent that more protection is presently merited, not less.
- It's no secret that pressure for development of shoreland areas is increasing dramatically. With the elimination of statewide standards and guidance, local governments will be increasingly pressured into a down-spin of abdication of their responsibilities in resource management, including but not limited to this critical protective parameter. Additionally, there will be infinitely more confusion and consequent frustration experienced by a citizenry that is forced to deal with piecemeal and patchwork resource regulation. Imagine trying to justify resource protection that magically changes by a political boundary line even though an adjacent property is located on the same body of water; such a scenario makes regulation difficult at best. Again, the navigable water resource doesn't stop at any given political boundary line; indeed the foundation of the Public Trust Doctrine is that the navigable water resource of Wisconsin be protected for the benefit of all of the citizenry in a consistant manner.

I can assure you that the highly touted precept of "local control" bantered by those who would eliminate virtually all regulations not tailored to their specific benefit, can be woefully inadequate in dealing with the tough issues inherent with regulation of a resource pressured by so many different and increasingly conflicting interests. Remember that it wasn't local control that facilitated the clean-up of the Lower Fox River; an abhorrent legacy that hasn't completely come to closure some 27 years later.

Other of malfeasance and inconsistency in regard to DNR oversight of this regulation are a mystery to this department. The variety of tools needed to mitigate hardship situations are adequately utilized by this county's Zoning Board of Adjustment, and it is expected that only the most egregious and grossly irresponsible decisions made by that board would be challenged by the DNR. Furthermore, precisely because of the potential for abuse or negligence by those charged with administration of the set-back regulation, some oversight of local decisions is healthy. The DNR has no veto power over local shoreland zoning decisions, and must defer to judicial venues to resolve the most egregious decisions. Given the enormous volume of variance requests, this process is used sparingly indeed.

In conclusion I must reiterate that the existing 75' building set-back to navigable waters, although arguably inadequate, is unquestionably more desirable than any headlong plunge toward a localized "do-your-own-thing" policy promulgated in deference to a minority of individuals who seemingly can't be bothered by, or have little understanding of, water quality and related natural resource protection.

I am respectfully yours,

Theodore Rohloff



### SIERRA CLUB - John Muir Chapter

222 S. Hamilton Street, Suite #1 Madison, WI 53703-3201

Tel: 608-256-0565 Fax: 608-256-4JMC

In Opposition to 1997 AB 424,
County Shoreland Zoning Ordinances
Before the Assembly Land Use Committee
Nov. 20, 1997
by Caryl Terrell, Legislative Coordinator

Thank you for the opportunity to testify on behalf of the statewide membership of the Sierra Club in opposition to AB 424 which removes DNR authority to establish setbacks form lakes in unincorporated areas.

Wisconsin's water resource protection laws and state mandated shoreline zoning have among their explicit objectives the preservation of natural shoreline aesthetics and protection of the public trust in surface waters by minimizing physical encroachment into waterways. AB 424 puts these laws in jeopardy. There has already been testimony on the water quality benefits of setbacks for structures for control of runoff and sedimentation, the importance of uniform standards consistently enforced to protect private property values and the importance to tourism of public access and shoreline aesthetic management. We agree that these considerations argue against adopting AB 424.

An undisputed trend is the increasing development pressure on Wisconsin lake resources. Representatives Ainsworth and Owens have touched on this in their questions. Such expensive investments highlight the high market value placed on lakefront property. More intensive development pressure is expected as waterfront properties become an increasingly scarce commodity. We ask the Legislature not to reduce the ability of state and local governments to protect our lake resources from the individual and cumulative impacts of such development.

Riparian owners are a multi-faceted constituency. Some riparians seek expansion of their permanent property into the water, other riparians seek full use of the water surface, free of obstructions, while others consider themselves stewards of the water resource, including the protection of aesthetic amenities. In addition, for tourism to flourish, the rights of non-riparians to access and full use of public waters must be protected. You, as legislators represent each of these constituencies.

The Sierra Club opposes AB 424 because it will greatly reduce or eliminate shoreland protection; cause adverse impacts on water quality, fisheries and wildlife; increase enforcement costs to counties; stimulate confusion and conflict among landowners; and penalize those who have followed the DNR setback standards for almost 30 years. If AB 424 is adopted, structures will be built closer than the 75 foot setback. Existing natural shoreline beauty will be lost forever to the cumulative impacts of unguided riparian construction.

We ask the committee to reject AB 424. Thank you for this opportunity to share our viewpoint.

